

House Bill 138

By: Representatives Coan of the 101st, Shaw of the 176th, O'Neal of the 146th, Rogers of the 26th, Millar of the 79th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Title 13 of the Official Code of Georgia Annotated, relating to contracts, so as to provide for the rejection of construction contracts when contractors, subcontractors, low tier subcontractors, or materialmen do not provide required insurance coverage; to provide for the definitions of certain terms; to prohibit an owner, contractor, or subcontractor from rejecting work completed, rejecting material supplied, or withholding payment due to lack of conforming insurance following acceptance of a policy or certificate of insurance; to provide certain exceptions; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 13 of the Official Code of Georgia Annotated, relating to contracts, is amended by adding a new chapter as follows:

"CHAPTER 12

13-12-1.

(a) As used in this chapter, the term:

(1) 'Certificate holder' means an owner, contractor, subcontractor, or lower tier subcontractor who, through a contract to improve real property, to perform construction services, or to perform construction management services, requires a contractor, subcontractor, lower tier subcontractor, or materialman to obtain insurance and show evidence of coverage.

(2) 'Contractor' means a person who contracts with an owner to improve real property, to perform construction services, or to perform construction management services for an owner.

(3) 'Lower tier subcontractor' means a person other than a contractor having a direct contract with a subcontractor.

(4) 'Materialman' means any person furnishing materials.

(5) 'Materials' means those items for which liens are permitted under Chapter 14 of Title 44 and tools, appliances, machinery, or equipment used in making improvements to the real estate, to the extent of the reasonable value or the contracted rental price, whichever is greater, of such tools, appliances, machinery, or equipment.

(6) 'Owner' means a person who has an interest in the real property improved, for whom an improvement is made, and who ordered the improvement to be made. An owner includes private persons and entities and state, local, or municipal government agencies, instrumentalities, or entities.

(7) 'Subcontractor' means, but is not limited to, subcontractors having privity of contract with the contractor.

(b) A certificate holder may accept the policy or certificate or may reject it as being nonconforming before the date the contractor, subcontractor, or lower tier subcontractor commences work or the materialman delivers material.

(c)(1) If a certificate holder does not reject the policy or certificate in writing and state the specific reason for the rejection before the date the contractor, subcontractor, or lower tier subcontractor commences work or the materialman delivers material, the certificate holder shall be deemed to have accepted the policy or certificate for work performed or materials supplied prior to the time the policy or certificate is specifically rejected in writing; provided, however, that the certificate holder shall not be deemed to have accepted a policy or certificate if:

(A) The policy or certificate was knowingly and fraudulently altered; or

(B) The certificate reflects coverages or conditions that are not contained in the underlying policy.

(2) A certificate holder shall not be deemed to have accepted a policy or certificate for work not yet performed or materials not yet supplied on the date the certificate holder rejects the policy or certificate as being nonconforming.

(3) After a policy or certificate is accepted, or deemed to be accepted, a certificate holder shall not use the lack of conforming insurance as a reason to reject work previously completed by a contractor, subcontractor, or lower tier subcontractor, to reject materials previously supplied by a materialman, or to withhold payment for work previously completed or for material previously supplied; provided, however, that the certificate holder may reject work previously completed or material previously supplied or may withhold payment for such work or materials if:

1 (A) The policy or certificate provided by the contractor, subcontractor, lower tier
2 subcontractor, or materialman was knowingly and fraudulently altered;

3 (B) The certificate reflects coverages or conditions that are not contained in the
4 underlying policy; or

5 (C) The policy is canceled, nonrenewed, or materially and adversely altered during the
6 term of the construction contract.

7 (d) If the owner, contractor, or subcontractor rejects a policy or certificate as
8 nonconforming in writing and states the specific reasons for rejection, any provision of the
9 contract requiring such insurance is enforceable, and payment may be withheld for work
10 performed or materials supplied after the date of the rejection of the policy or certificate."

11 **SECTION 2.**

12 This Act shall become effective on July 1, 2007.

13 **SECTION 3.**

14 All laws and parts of laws in conflict with this Act are repealed.